



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

CASE NO.: 1476-2024

BEFORE THE HONOURABLE JUSTICE SCHUTTE (AJ)

Date: 24th AUGUST 2026

In the matter between:

KESEGAN SUBRAMONEY

In re:

THE EMPLOYEES OF SFT ENERGY (PTY) LTD
LISTED ON ANNEXURE A

APPLICANT

APPLICANT

And

SFT ENERGY (PTY) LTD

1ST RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA LTD

2ND RESPONDENT

THE COMPANIES AND INTELLECTUAL
PROPERTIES COMMISSION

3RD RESPONDENT

COURT ORDER

The Judge heard the matter on the 21ST July 2026 and electronically circulated the judgment on the 24TH August 2026, gave an order in paragraph "35" as follows:

The following order is made:

- 1 Mr Subramoney is granted leave to intervene in the employees' business rescue application under case number 1476/2024.

- 2 It is confirmed that the matters were consolidated by order of the Judge President on 13 February 2025, alternatively by Msibi AJ on 7 October 2025.
- 3 The application by Merchant West to intervene is dismissed.
- 4 The late filing by the employees of their replying affidavit in their application to place SFT Energy (Pty) Ltd under business rescue supervision is condoned.
- 5 The application by the employees of SFT Energy (Pty) Ltd to place SFT Energy (Pty) under business rescue supervision is dismissed.
- 6 The application by Mr Subramoney to place SFT Energy (Pty) Ltd under business rescue supervision is dismissed.
- 7 Mr Subramoney, in his personal capacity, is ordered to pay the costs of those parties opposing his application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.
- 8 Mr Subramoney, in his personal capacity, is ordered to pay the costs of those parties opposing the employees' application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.
- 9 Mr Subramoney, in his personal capacity, is ordered to pay the costs of the employees in their application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.
- 10 The determination of placing SFT Energy (Pty) Ltd in liquidation in terms of section 131(1)(4)(b) of the Companies Act 71 of 2008 is postponed to a date to be determined as set out below.
- 11 The liquidation applications of First Rand Bank Ltd and Standard Bank of South Africa Ltd, and Sasol Oil (Pty) Ltd (Sasol) are postponed to a date to be determined as set out below.

- 12 The attorneys of the parties to the consolidated matter are ordered to, amongst themselves and within ten days from this order, complete and file a Form B.
- 13 The attorneys of First Rand Bank Ltd are ordered to enrol the matter within 15 days of this order.
- 14 Should any party fail or refuse to co-operate in complying with the orders relating to the determination of the date of hearing or the completion of Form B, any other party may approach the registrar for enrolment of the matter for judicial case management by this court.
- 15 The date of hearing is to be arranged in conjunction with this court's secretary.
- 16 The parties are invited to file supplementary heads of argument by no later than 15 September 2026, strictly dealing with (a) whether a liquidation order in terms of section 131(1)(4)(b) of the Companies Act 71 of 2008 may be granted whilst a business rescue application is pending, and (b) whether section 131 envisages more than one business rescue application.





IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

Consolidated case number: 1476/2024

- (1) Reportable: Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised: Yes/No


SIGNATURE

24/08/2024
DATE

In the matter between:

KESEGAN SUBRAMONEY

Intervening applicant

In re:

THE EMPLOYEES OF SFT ENERGY (PTY) LTD

Applicants

LISTED ON ANNEXURE A

and

SFT ENERGY (PTY) LTD

First respondent

THE STANDARD BANK OF SOUTH AFRICA LTD

Second respondent

THE COMPANIES AND INTELLECTUAL

Third respondent

PROPERTIES COMMISSION

And in the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Applicant

and

SFT ENERGY (PTY) LTD

Respondent

And in the matter between:

SASOL OIL (PTY) LTD

Applicant

and

SFT ENERGY (PTY) LTD

Respondent

And in the matter between:

FIRSTRAND BANK LTD

Applicant

and

SFT ENERGY (PTY) LTD

Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 24 August 2026 at 10h00.

JUDGMENT

Schutte AJ

Introduction

[1] When liquidation and business rescue applications compete, the choice is not between good and bad, but between bad and worse. The parties agree that I should favour the bad option but disagree whether it is liquidation or business rescue. It seems that what is bad for the goose is worse for the gander.

[2] The director, who is also the sole shareholder, says with his business rescue plan the company will emerge “not weakened but strengthened, not diminished but enlarged, not surviving but thriving, creating value for creditors, employees, communities, customers, and the country”. But what weight can I attach to this when the company owes its creditors, on the director’s version, at least R238 million?¹ And where the company had ceded the same debtor’s book to no less than seven creditors?²

The business rescue supporters

[3] In this matter, the business rescue supporters/applicants are:

3.1 SFT Energy (Pty) Ltd (the company), a private company with limited liability, conducting business as a major fuel reseller.

3.2 Mr Subramoney, the sole director, sole shareholder, and sole beneficiary of the company.

3.3 The 22 non-trade union affiliated employees of the company.³ Mr Subramoney confirmed in October 2025 that the company employed 22 employees.⁴ By July 2026, a further 7 employees had joined the company.

The liquidation supporters

[4] The liquidation supporters/applicants are:

4.1 First Rand Bank Ltd (FRB), a public company and registered bank.

¹ At page 21(25).

² At page 20(173) read with pages 21(44) – 21(46).

³ Paragraph 75 at page 9(14).

⁴ Paragraph 26 at page 43(121).

4.2 Standard Bank of South Africa Ltd (SBSA), a public company and registered bank.

4.3 Sasol Oil (Pty) Ltd (Sasol), a private company with limited liability.

Point in limine that matters were not consolidated

[5] When arriving at court on 21 July 2026, I was under the impression that the following consolidated matters served on my opposed motion roll:

5.1 The employees' business rescue application, opposed by FRB.

5.2 Mr Subramoney's business rescue application, opposed by FRB and Sasol.

5.3 The liquidation applications of SBSA, FRB, and Sasol, all opposed by the company.

5.4 The company's application to stay proceedings in the FRB application.

[6] To my surprise, the business rescue supporters argued that the matters had not been consolidated. The liquidation supporters insisted that the judge president had consolidated the matters at a judicial case management hearing.

[7] Whilst I do not question a litigant's right to raise points *in limine*, I do question the timing. The point was raised from the bar long after FRB and the company had confirmed consolidation.⁵ The more complex the matter, such as the present, the more counsel involved, such as the present where 11 counsel appeared, and the more voluminous the matter, such as the present where the papers exceed 2400 pages, and where the employees' livelihoods are at stake, such as the present matter, the greater the need to raise points *in limine* by the latest in the heads of argument.

⁵ In their respective heads of argument.

[8] No consolidation order was available; hence, I am to determine the correct position. This I did, by having regard to the court bundle, the heads of argument, and the events that led to the judicial case management hearing.

[9] The consolidated matters were uploaded onto CaseLines before close of the roll. Had the business rescue supporters genuinely believed that the matters were not consolidated, surely, they would have immediately protested. They did not.

[10] In addition, the filed heads of argument pertinently drew my attention to the consolidation. The company's written heads of argument informed me that the "application is a consolidated application" and listed the consolidated matters as the three liquidation and two business rescue applications.

[11] In FRB's heads of argument, filed in March 2025, mention is made that four applications were consolidated. By then, the fifth application, Mr Subramoney's business rescue application, had not been lodged. He later lodged it under the same case number as the employees' application. From a procedural standpoint, the fate of the employees' application will also be that of Mr Subramoney's.

[12] Mr Subramoney's heads of argument, filed after FRB's heads of argument, are silent on the issue of consolidation. Had Mr Subramoney genuinely believed that the matters were not consolidated, his heads of argument should have reflected it.

[13] The employees did not file heads of argument nor did they, before the hearing, raise any issue in that regard.

[14] The events that led to the judicial case management hearing before the Judge President confirm that the matters were consolidated. In November 2024, FRB applied to the Judge President to case manage the matters. In that founding affidavit,⁶ FRB's attorney requested the Judge President to case manage the three liquidations and the employees' business rescue applications "in order to be

⁶ At page 44(4) para 7.

allocated a hearing date so that these applications (concerning the same facts and issues) are disposed of simultaneously.”

[15] FRB’s attorneys explained that the application was necessitated because the company had failed to sign Form B, prescribed in our division’s practice directives. The attorneys’ covering letter states that consolidation would be in the interests of justice and to not strain judicial resources.

[16] The Judge President acceded to the request. The legal representatives of FRB, Standard Bank, Sasol, SFT Energy and the employees of SFT Energy then appeared before the judge president on 13 February 2025. FRB later recorded the events leading up to and on 13 February 2025 as follows:

“On 22 November 2024, after several failed attempts to have SFT Energy agree to a form B to progress the matter to finality, FRB’s attorney of record deposed to an affidavit to request that the FRB Liquidation Application, the Standard Bank Liquidation Application, the Sasol Liquidation Application and the Business Rescue Application be case managed in order to be allocated a hearing date so that these applications (concerning the same facts and issues) can be disposed of simultaneously. This request was supported by Standard Bank and Sasol by way of affidavit.

At the case management meeting held before the Honourable Judge President it was *inter alia* agreed and directed that the four applications would be consolidated under case number 1476/2024 and set down on the opposed motion roll for hearing on 7 October 2025.”

[17] Mr Subramoney did not engage any of FRB’s allegations in his replying affidavit, where he should have, had he believed the allegations were untrue.

[18] The court bundle contains FRB's attorneys' email, addressed at 13:41 on the date of the judicial case management, to the Judge President's registrar. Attached to that email is a draft order, wherein it refers to consolidation.⁷

[19] There are also other grounds to conclude that the matters were consolidated. In June 2024, Mr Subramoney lodged an application to stay proceedings. In his notice of motion,⁸ he requested that the liquidation proceedings "be temporarily stayed pending the adjudication and determination of the consolidation application of the winding up proceedings of matters with case numbers 2148/2024, 1476/2024 and 2596/2024".⁹

[20] In February 2026, Mr Subramoney's attorney stated the following in an affidavit in an unrelated procedural dispute:

"The consolidated matters before this Court involve complex commercial disputes arising from multiple applications, including three liquidation applications and a business rescue application. The record comprises 2,297 pages. Multiple parties are involved, each represented by separate legal teams. The factual matrix is intertwined, and the legal issues overlap significantly.

The interests of justice demand that oral argument in such complex, consolidated matters be heard on consecutive days."¹⁰

[21] The inescapable inference is that the Judge President acceded to the parties' agreement to consolidate the matters.

[22] But the business rescue supporters argue that consolidation may, in terms of rule 11 of the Uniform Rules of Court, only be granted on application, which they say there was not. I understand this to mean that the consolidation order was irregular.

[23] Rule 11 stipulates as follows:

⁷ At pages 39(1) – 39(8).

⁸ Paragraph 4.

⁹ At page 34(2).

¹⁰ At page 44(72).

“Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon —

(a) the said actions shall proceed as one action;

(b) the provisions of rule 10 shall *mutatis mutandis* apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.”

[24] FRB’s application to the judge president, supported by a founding affidavit, is, in my view, a proper application for, amongst others, consolidation. But even if I am wrong, the consolidation at the judicial case management hearing was proper. This is because rule 37A has dramatically transformed the way matters are litigated.

[25] In terms of rule 37A(2):

“Case management through *judicial intervention* —

(a) *shall be used in the interests of justice to alleviate congested trial rolls and to address the problems which cause delays in the finalisation of cases;*

(b) the nature and extent of which shall be complemented by the relevant directives or practices of the Division in which the proceedings are pending; and

(c) shall be construed and applied in accordance with the principle that, notwithstanding the provisions herein providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare properly, comply with all rules of court, and act professionally *in expediting the matter towards trial and adjudication.*” (My emphasis.)

[26] Rule 37A(1)(b) stipulates that a judicial case management system applies to any proceedings designated by the Judge President. Paragraph 5 of our Division’s Practice Directives provides that opposed motions are to be case-managed by completing a prescribed Form B at any time after the filing of a notice to oppose. If a

party fails to co-operate in completing the form, where, amongst others, timeframes are to be set out, then the co-operating party may, on affidavit, approach the Judge President for permission to enrol the matter for case management.

[27] Rule 37A envisages an “*intervention*”, a scenario where courts take control of cases to achieve, as soon as possible, settlement or trial readiness, the latter on the narrowest list of disputes. The purpose of judicial case management is to free court time and to shorten the waiting list for trial dates. It is to utilise public funds as best as possible, a goal worth embracing by all stakeholders.

[28] When the parties appeared at the judicial case management hearing, they had agreed to consolidation. It is trite that parties are at liberty to agree to extend or shorten timeframes and to eliminate unnecessary processes, because the rules are for the court and not the court for the rules. In *Federated Trust Ltd v Botha*,¹¹ the court held that:

“The rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts.”

[29] I can think of no better example of judicial intervention at work than the current matter. The legal questions and facts in the consolidated applications overlap, thereby justifying, if not necessitating, consolidation, especially where the parties have agreed to consolidate these complex matters. Their subsequent actions align with the consolidation order.

[30] It is for these reasons that I held that the matters were consolidated.

Merchant West’s intervention application

[31] The consolidation point *in limine* was, however, not the last surprise sprung on me by the business rescue supporters. Merchant West, a creditor of the

¹¹ *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654D.

company, applied, from the bar, for leave to intervene to lodge an application to place the company under business rescue supervision. Generally, the closer a delay-causing indulgence is sought to the hearing date, the more probable it is that it is sought with an ulterior motive.

[32] Merchant West's counsel indicated that a successful intervention application would lead to a postponement; hence, Merchant West tendered the wasted costs occasioned by the belated application to intervene. Merchant West sought this indulgence more than two years after the employees' business rescue application had been lodged. As I have said, the closer the indulgence to the hearing date, the more probable that the indulgence is sought with an ulterior motive.

[33] Merchant West's counsel informed me that Merchant West's claim against the company was approximately R27 million and that it had, shortly before the hearing, obtained knowledge of the current applications. Merchant West then resolved to apply for intervention, but only after the company had provided it with the company's management statements.

[34] But Merchant West's name appears several times in the court bundle. In FRB's answering affidavit to the employees' business rescue application, FRB recorded that the company's creditors amounted to R655 million, and that Merchant West was one of the creditors, with a claim of R30 million.¹²

[35] In FRB's attorneys' covering letter to the Judge President, wherein they requested that the matters be case-managed, the attorneys recorded that the letter was addressed to the Judge President jointly by FRB, SBSA, Genfin, and Merchant West. The covering letter refers to the current applications. There is proof that the letter was sent to Merchant West's attorneys.

[36] The letter also confirmed that Merchant West had launched an urgent application on 25 June 2024 and that there were multiple liquidation and business rescue applications pending against the company. Clearly, Merchant West had

¹² At page 14(14).

knowledge of the employees' business rescue application as far back as August 2024. Its knowledge was not as recent.

[37] It struck me as odd that the company would, shortly before the hearing of a matter which had been set down for months, provide its management statements to a creditor that had been inactive in the pending litigation. Even more odd that the creditor would then independently resolve to support the business rescue application, by lodging a surprise application to intervene on the morning of the hearing. It is beyond comprehension that the management statements were given to a creditor and not to the court, or, for that matter, to the litigating creditors, and even more odd that the statements were not introduced by Mr Subramoney. In Merchant West's hands, the company's management statements constitute hearsay evidence.

[38] But the management statements are of no moment, as the employees, in their belated replying affidavit, had discussed them.

[39] It has also not escaped me that another creditor had on 3 October 2025, shortly before the scheduled hearing of 7 October 2025, lodged a business rescue application in Mbombela, our main seat.¹³ Merchant West's belated intervention application looked all too familiar. It was also too familiar when the business rescue supporters pushed for the matter's postponement. The liquidation supporters were intent on finalisation.

[40] Merchant West's belated intervention application requires context. In *Van Greunen v Sigma Switchboard Manufacturing CC*,¹⁴ the court remarked as follows with regard to the inherent urgency of liquidation applications:

"In recognition of the in-built urgency of liquidation applications, the practice has developed in this division that it is unnecessary for applicants to formalistically recite a standard set of allegations to satisfy the terms of rule 6(12) and to seek and obtain a specific order condoning the non-compliance with provisions of rule 6. The practice

¹³ At page 44(40).

¹⁴ *Van Greunen v Sigma Switchboard Manufacturing CC* [2003] ZAECHC 12 at para 10.

sensibly works from the reasonable and recognised assumption that all liquidation applications are urgent and so should be treated differently to other applications.”

(In our division we do not have a similar practice. The principle, that liquidations are inherently urgent, however, applies.)

[41] In *A1 Capital (Pty) Ltd v Urban Lifestyle Investment Holdings (Pty) Ltd and Others*,¹⁵ the court held that business rescue proceedings:

“... are not to be approached in a leisurely fashion by an applicant. They are to be approached with the maximum possible expedition and at the first possible opportunity. They must, accordingly, be initiated when the company in question first begins to show signs of distress and preferably before that distress morphs into actual insolvency. As was stated in *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others*:

‘Business rescue proceedings are geared at providing a window of opportunity to restore an ailing company to financial health and functionality ... The window of opportunity does not remain open indefinitely. It follows, therefore, that the legislature will impose and retain such a moratorium only where, in addition to there being a reasonable prospect of rescuing the company, the provisions concerning business rescue proceedings are timeously complied with’.

[42] In *Gormley v West City Precinct Properties (Pty) Ltd*,¹⁶ the court stated that business rescue proceedings envisage a short-term approach to the financial affairs of a company, because the financial world requires certainty and creditors “cannot be left in a state of flux for an indefinite period”.

[43] Notwithstanding the inherent urgency of liquidation and business rescue applications, the situation unfolding before me was that the business rescue supporters were pleading for Merchant West to be allowed leave to intervene and thus essentially for the matter to be postponed. The business rescue supporters did not approach the company’s own business rescue application with “maximum possible expedition”.

¹⁵ *A1 Capital (Pty) Ltd v Urban Lifestyle Investment Holdings (Pty) Ltd and Others* [2026] ZAKZDHC 21 at para 37.

¹⁶ *Gormley v West City Precinct Properties (Pty) Ltd* 2013 JDR 1895 (WCC) para 11.

[44] Interventions in business rescue proceedings are governed by rule 12 and section 131(3) read with section 128(1)(a) of the Companies Act 71 of 2008. (Unless stated otherwise, where in this judgment I refer to sections it will be to a section of the Companies Act 71 of 2008.)

[45] Rule 12 states as follows:

“Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.”

[46] Section 131(3) states as follows:

“Each affected person has a right to participate in the hearing of the application in terms of this section.”

[47] Section 128(1)(a) defines “an affected person” as a shareholder or creditor of a company or any registered trade union representing employees of the company or those employees not represented by a registered trade union.

[48] In *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and others and a related matter*,¹⁷ the court stated this about rule 11:

“The rule is equally applicable to applications. It has not overridden or replaced our common law, which remains applicable to interventions. Our courts have held that a party is entitled to intervene as an applicant in an application where:

18.1 it has a direct and substantial interest in the right that is the subject matter of the application, which could be prejudiced by the judgment of the court. The interest must be such that the intervenor's joinder is either necessary or convenient. But the

¹⁷ *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and others and a related matter* [2020] 4 All SA 226 (KZP) at para 18.

possibility that a legal interest exists is sufficient, and it is not necessary for the court positively to determine that it exists;

18.2 the allegations made by the intervening applicant constitute a *prima facie* case or defence. It is, however, not necessary for the intervenor to satisfy the court that it will succeed in its case or defence. It is sufficient for the party seeking to intervene to rely on allegations which if they can be proved in the main application, would entitle it to succeed. In assessing the intervenor's standing, then, the court must assume that the allegations it advances are true and correct; and

18.3 the application is made seriously and is not frivolous."

[49] The company's counsel referred me to *Engen Petroleum Ltd v Multi Waste (Pty) Ltd and Others* 2012 (5) SA 596 (GSJ) and *Timasani (Pty) Ltd and another v Afrimat Iron Ore (Pty) Ltd* [2021] 3 All SA 843 (SCA). In *Engen Petroleum*, the court held that an affected person has a right to participate in the hearing and need not require the court's permission to intervene, but that leave may be "necessary as a procedural requirement."¹⁸ In *Timasani*, the issue in dispute was the creditor's right to participate in proceedings post-business rescue supervision order, which is governed by section 145. The matter before me is distinguishable from *Timasani* in that the current matter involves the position pre-business rescue order.

[50] Mr Subramoney's counsel referred me to *Merchant West (Pty) Ltd v Crestar Printers & Publishers (Pty) Ltd*,¹⁹ where the main issue in dispute was whether an applicant for liquidation may apply for the upliftment of the suspension of liquidation proceedings, pending business rescue proceedings, which is not the current issue.

[51] I return to the current matter. Merchant West knew from early 2024 about the liquidation and the employees' business rescue applications. It participated by joining FRB's request to case manage the matter and ostensibly supported the company's liquidation. Two years later, it changed its mind and elected to support the business rescue, seeking to intervene.

¹⁸ *Engen Petroleum Ltd v Multi Waste (Pty) Ltd and Others* 2012 (5) SA 596 (GSJ) at para 30.

¹⁹ *Merchant West (Pty) Ltd v Crestar Printers & Publishers (Pty) Ltd* [2021] ZAGPPHC 397.

[52] Must a court tolerate and reward this by affording Merchant West a blanket right to participate when it sues Merchant West? I do not think so, because such a stance would allow Merchant West, and for that matter any intervening party, to abuse the court's process and to derail pending litigation to the prejudice of, at least, the liquidation supporters.

[53] Section 131(3) does not specify when and how an affected person is to indicate his/her/its intention to participate, nor does it specify the form of participation. Does an affected person have the right to make submissions from the bar, or must the submissions be in the form of pleadings? It would, in my view, be absurd to allow an affected party in business rescue proceedings more procedural rights than the parties cited in the proceedings. In liquidations, there is no statutory obligation on an applicant to notify all the affected parties; hence, interventions in liquidations occur as and when an affected party obtains knowledge of the liquidation. The difference is easily understood.

[54] A cited party who opposes the business rescue application is expected to file a notice of intention to oppose within a prescribed period, and thereafter an answering affidavit within a prescribed period. Why should that be different for any intervening affected party? There seems to be no logical reason. In my view, a non-cited affected party must present his/her/its case in accordance with the rules of court, and that also applies to the rules relating to urgency. Such an approach will oblige participants to file their papers within the timeframes set for the cited parties and will support the speedy finalisation of business rescue proceedings, as they should be.

[55] In *Hudson v Hudson*,²⁰ the court held that it constitutes an abuse of process if court process is used for a goal other than the process's object.

[56] In *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd*,²¹ the court held that:

²⁰ *Hudson v Hudson* 1927 AD 259.

"It has repeatedly been stressed that business rescue exists for the sake of rehabilitating companies that have fallen on hard times but are capable of being restored to profitability or, if that is impossible, to be employed where it will lead to creditors receiving an enhanced dividend. Its use to delay a winding-up, or to afford an opportunity to those who were behind its business operations not to account for their stewardship, should not be permitted."

[57] In *PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others*,²² the applicant therein issued its business rescue application out of one court. The company then amended its registered address to another court's jurisdiction. The applicant withdrew the first business rescue application and issued a fresh business rescue application with the court having jurisdiction over the amended registered address. The same playbook is unfolding in the current matter. Here, business rescue applications are currently pending in both our main and local seats.

[58] In *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH*,²³ the court stated:

"This binary position fails to appreciate the true juridical nature of the power enjoyed by the courts to prevent an abuse of process, of which the doctrine of unclean hands is a species. An abuse of process can occur in a variety of ways. The litigation may be frivolous or vexatious. A litigant may seek to use the legal process for an ulterior purpose or by recourse to conduct that subverts fundamental values of the rule of law. The behaviour of the litigant may be so tainted with turpitude that the court will not come to such a litigant's aid. The unclean hands doctrine references this latter type of abuse. It is the abusive conduct of the litigant that, in a proper case, may warrant the exercise of the court's power to non-suit such a litigant. The court does so, even though the litigant claims a right that they would vindicate in the court proceedings. For this reason, the power is to be exercised with great caution. Put simply, the court enjoys the power to safeguard the integrity of its process. The court will only exercise this power upon a careful consideration of the prejudice that this

²¹ *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd* 2019 (4) SA 532 (SCA) at para 22.

²² *PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others* 2024 (1) SA 400 (SCA).

²³ *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* 2024 (1) SA 331 (CC) at para 77.

may cause to the abusive litigant, and, in particular, the harm that may be occasioned to a litigant whose claim of right will not be decided by the court. But the court's power to prevent the abuse of its process is not determined by the right that the abusive litigant claims."

[59] By acceding to Merchant West's application, the court would have seriously prejudiced the liquidation supporters; a prejudice no cost order can cure. The following example illustrates substantial financial prejudice to the liquidation supporters. Mr Subramoney conceded that the company owes SBSA and FRB R107 million and R60 million, respectively.²⁴ If I calculate simple interest thereon at a conservative rate of 7% per annum, the annual interest accruing would be R11 690 000.00. Had I postponed the matter, the next hearing date would have been in about 6 months. The accumulated interest would then have been almost R6 million. No cost order can rectify that type of financial prejudice because the accrued interest would have easily outpaced any cost order, even a punitive one.

[60] The application to intervene was simply an orchestrated delaying tactic, an abuse of process. Merchant West's application was without doubt co-ordinated with Mr Subramoney or the company or brought for their benefit. Merchant West received the company's management statements but remained silent, only to bring a surprise intervention application.

[61] A postponement could also not – according to the business rescue supporters' version – be in the interest of the company or the employees, because the employees are working on a salary cut.

[62] The abuse of process is magnified when the following are considered:

63.1 The business rescue supporters' frequent change of attorneys.

63.2 Mr Subramoney filed his business rescue application a day before the matter was to be heard on the opposed motion roll in October 2025.

²⁴ At page 21(24).

63.3 The employees filed their supplementary affidavit, coincidentally, also a day before the hearing of the opposed motion in October 2025.

63.4 In yet another coincidence, shortly before the October 2025 hearing, another creditor filed a business rescue application in Mbombela, our main seat.²⁵

63.5 The company filed its response to Sasol's summary judgment application on the morning of the summary judgment hearing.

63.6 The business rescue supporters failed to co-operate in completing Form B, prompting the liquidation supporters to utilise an enforcement mechanism in our practice directives.

63.7 The company provided Merchant West with the company's management statements a few weeks before the 21 July 2026 hearing. It remains a mystery as to why neither the company nor Mr Subramoney has filed these statements earlier.

63.8 The employees filed their replying affidavit two years late, and only on the eve of the hearing of 21 July 2026.

63.9 On 21 July 2026, the union's counsel appeared in the matter, only to request to be excused shortly thereafter.

63.10 The business rescue supporters were content with accommodating Merchant West's attempt to force a postponement.

63.11 The business rescue supporters' unfounded and surprise challenge to the consolidation order.

[63] I dismissed the application to intervene on the basis that it was an abuse of process or that an affected person is not afforded a second bite at the proverbial

²⁵ At page 44(40).

cherry in terms of section 131(3) or that the application was not serious but frivolous, as envisaged in *Peermont*.

Housekeeping

[64] After ruling that the matters were consolidated and dismissing the intervention application, the parties (excluding Merchant West) agreed that I should first consider both business rescue applications. After arguing the business rescue applications, they also agreed that, should I consider liquidation in terms of section 131(4)(b), I would afford the business rescue supporters the opportunity to further address me. From here onwards, I only dealt with the two business rescue applications.

The applicable legal principles

[65] Applications by affected persons to place companies under business rescue supervision are governed by section 131. The relevant part stipulates as follows:

“(1) Unless a company has adopted a resolution contemplated in section 129, an affected person may apply to a court at any time for an order placing the company under supervision and commencing business rescue proceedings.

(2) An applicant in terms of subsection (1) must—

(a) serve a copy of the application on the company and the Commission; and

(b) notify each affected person of the application in the prescribed manner.

(3) Each affected person has a right to participate in the hearing of an application in terms of this section.

(4) After considering an application in terms of subsection (1), the court may—

(a) make an order placing the company under supervision and commencing business rescue proceedings, if the court is satisfied that—

(i) the company is financially distressed;

(ii) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment-related matters; or

(iii) it is otherwise just and equitable to do so for financial reasons, and there is a reasonable prospect for rescuing the company; or

(b) dismissing the application, together with any further necessary and appropriate order, including an order placing the company under liquidation.

(5) ...

(6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until—

(a) the court has adjudicated upon the application; or

(b) the business rescue proceedings end, if the court makes the order applied for.”

[66] Section 131(4) imposes two jurisdictional requirements:

67.1 The applicant must establish *at least one* of the following three facts: The company is financially distressed, or the company has failed to honour payments in terms of a public regulation obligation or in terms of employment-related matters or that it will be just and equitable for financial reasons to do so.

67.2 If the applicants (in both applications) establish the first jurisdictional fact, the applicants must prove a reasonable prospect of rescuing the company.

[67] In terms of section 128(1)(f), financially distressed means that –

“(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or

(ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;”

[68] Because it is common cause that the company is financially distressed, the real issues in dispute are thus whether the business rescue applicants have shown reasonable prospect to rescue the company or to secure for creditors a better dividend than in liquidation.

Reasonable prospect to rescue the company

[69] In *Richter v Absa Bank Limited*,²⁶ the court held that business rescue proceedings are “meant to be a flexible, effective process of extending the lifespan of companies and businesses. A necessary consequence thereof is limitation, to some extent, on the power of creditors to singlehandedly curtail the life of a company”. The Supreme Court of Appeal also remarked that the focus in business rescue proceedings is on the interests of all stakeholders, which includes employees and trade unions, whilst in liquidation proceedings the interests of creditors and shareholders take centre stage. Business rescue proceedings seek to protect the interests of a wider group of stakeholders.

[70] In *Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Kyalami) (Pty) Ltd*,²⁷ the court held that the goal of business rescue proceedings is either to return the company to solvency or to yield a better dividend in eventual liquidation. With regard to what “reasonable prospect” entails, the court had this to say:

“... it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect – with the emphasis on ‘reasonable’ – which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough.”

[71] The court held that the allegations regarding reasonable prospect must neither be vague nor speculative, based on facts set out in the founding papers.

²⁶ *Richter v Absa Bank Limited* [2015] ZASCA 100 at paras 13 and 14.

²⁷ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* [2013] ZASCA 68 at paras 27, 29 and 30.

[72] In *Zoneska Investments (Pty) Ltd t/a Bonatla Properties (Pty) Ltd v Midnight Storm Investments 386 Ltd* (Registration No: 2007/019270/06) and another (*Grayhaven Riches 9 Ltd and others as Interested Parties; First Rand Bank Limited as Intervening Creditor*),²⁸ the court held that reasonable prospect means reasonable possibility.

[73] In *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others*,²⁹ the court held that the legislator preferred proceedings that aim to restore viable companies, but not the restoration of all companies.

[74] In *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd*,³⁰ the court said that an applicant for business rescue cannot approach court with “flimsy grounds in the hope that the [business rescue] practitioner will provide the panacea to its problems. The application must set out sufficient facts, if necessary augmented by documentary evidence, from which a court would be able to assess the prospects of success before exercising its discretion.”

[75] In *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 (Pt) Ltd*,³¹ the court said the following:

“24. Whilst every case must be considered on its own merits, it is difficult to conceive of a rescue plan in a given case that will have a reasonable prospect of success of the company concerned continuing on a solvent basis unless it addresses the cause of the demise or failure of the company's business, and offers a remedy therefor that has a reasonable prospect of being sustainable. A business plan which is unlikely to achieve anything more than to prolong the agony, i.e. by substituting one debt for another without there being light at the end of a not too lengthy tunnel, is unlikely to suffice. One would expect, at least, to be given some concrete and objectively ascertainable details going beyond mere speculation in the case of a trading or

²⁸ *Zoneska Investments (Pty) Ltd t/a Bonatla Properties (Pty) Ltd v Midnight Storm Investments 386 Ltd* (Registration No: 2007/019270/06) and another (*Grayhaven Riches 9 Ltd and others as Interested Parties; First Rand Bank Limited as Intervening Creditor*) [2012] 4 All SA 590 (WCC) at para 39.

²⁹ *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others* 2014 (1) SA 103 (KZP) at para 10.

³⁰ *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others* 2012 (5) SA 497 (WCC) at para 41.

³¹ *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 (Pt) Ltd* [2011] ZAWCHC 442; 2012 (2) SA 423 (WCC) at para 24.

prospective trading company, of:

24.1. the likely costs of rendering the company able to commence with its intended business, or to resume the conduct of its core business;

24.2. the likely availability of the necessary cash resource in order to enable the ailing company to meet its day-to-day expenditure, once its trading operations commence or are resumed. If the company will be reliant on loan capital or other facilities, one would expect to be given some concrete indication of the extent thereof and the basis or terms upon which it will be available;

24.3. the availability of any other necessary resource, such as raw materials and human capital;

24.4. the reasons why it is suggested that the proposed business plan will have a reasonable prospect of success.”

[76] In my view, an application for business rescue can only succeed if the applicant provides an honest, detailed, and verified or verifiable explanation covering the following:

77.1 How it came about that the company became financially distressed.

77.2 The extent of the financial distress.

77.3 The steps the company has implemented or is planning to implement to avoid a repeat of history.

77.4 How and when business rescue proceedings would enable the company to return to financial health, or if return is not foreseeable, why and to what extent the benefit to stakeholders will be better in business rescue than liquidation.

77.5 The impact of liquidation on the employees.

[77] It goes without saying that where the applicant is a related party, the highest candour is expected.

[78] Put bluntly, a company in financial distress seeking business rescue supervision must explain how it got in this financial hole, how deep the hole is and how and when it intends to get out of the hole. A court cannot change the trajectory of a distressed company if it does not understand how the company got there.

[79] I will now consider the facts against the legal framework in considering whether the company has a prospect of being rescued.

The alleged causes of the company's financial distress

[80] The employees initially said that the company is in financial distress because of the following reasons:

"the falling coal price in recent months that impacted the company's customers. the company is currently unable to pay all its debts, but in the last month the coal price has increased and the business is returning to profitability and it will be able to pay all its debts as they become due and payable within the immediately ensuing six months as the coal price has begun rising in the last month, provided we think it is placed in the hands of a reliable manager and hence the Business Rescue process."³²

[81] In their supplementary affidavit, the employees changed their version to state that the collapse was due to the fuel supply crisis caused by Sasol in 2023. The employees' versions are materially contradictory.

[82] In his founding affidavit, Mr Subramoney said that it had been the unlawful conduct of, amongst others, Sasol, who had caused the downfall of the company. The company's collapse in late 2023 was entirely caused by external factors, "specifically a catastrophic supply disruption" from Sasol. The supply shock was not

³² Paragraph 39 at page 9(7).

due to “management failure, operational inefficiency or market rejection” of the company’s business model.

[83] In June 2025, the company issued summons against Sasol for payment of R1.2 billion, which claim arises from Sasol’s breach of supply agreements. It suffices to say that the company had not, as one would have expected, applied in 2023 to the urgent court for any relief to compel Sasol to comply with the agreement. There is no explanation why an urgent application had not been lodged.

[84] Sasol denied any unlawful conduct or that it had caused the company’s collapse. Sasol says the company’s claim lacks merit.

[85] In July 2025, the company issued summons against SBSA for payment of R246 million. The cause of action is SBSA’s unlawful withdrawal of credit facilities during a critical operational period. Mr Subramoney’s counsel argued that the Sasol supply crisis and SBSA’s unlawful actions occurred one after the other.

[86] I have alluded to the fact that Mr Subramoney had ceded the company’s debtor’s book to SBSA and FRB. The bank customer is suing the bank for cancelling the customer’s credit facility, which the customer had obtained by offering the same asset to two different creditors, one of which is the bank it is suing. The irony has not escaped me.

[87] In their answer, FRB offers a reason, although not in so many words, for the company’s financial distress. FRB said that the company had ceded its debtor’s book to multiple creditors, which include FRB, Sasol, SBSA, Hollard, Mutual and Federal, Genfin and Investec Bank.³³

[88] Mr Subramoney has not denied the multiple cessions but argues that these allegations are directed at the company’s management practices and insists that “these irregularities” be investigated by a business rescue practitioner. Yet, in his

³³ At page 20(173).

founding affidavit he had said, in direct contradiction, that the company's collapse was not due to management failures.

[89] Mr Subramoney admitted that the company's debtor's book was ceded to FRB and SBSA.³⁴

[90] The fact that the company ceded its debtor's book to more than one creditor, the employees said,³⁵ "may raise legal questions, but does not render the conduct of the business unlawful, and any such questions can be resolved by the practitioner".

[91] Mr Subramoney stated³⁶ that the company's creditors are SBSA (R107 million), FRB (R60 million), Hollard (R65 million), Genfin (R5.5 million), and Merchant West (R1 million).³⁷ (Four of these creditors hold cessions over the company's debtor's book, as set out in FRB's answering affidavit.)

[92] Since September 2024, FRB said, it had, with the assistance of other creditors, attempted to collect the company's debtor's book. FRB managed to collect only R450 000, underlining the improbability of successfully recovering the company's debtor's book.

[93] The size of the company's debtor's book, the difficulty collecting the debt, and the need to offer the same asset to multiple creditors underscore the real reasons for the company's financial distress: unlawful borrowing and borrowing more than the income it generates. Mr Subramoney and the employees have not honestly explained the causes of the company's financial distress.

The company's liabilities

³⁴ At page 17(10).

³⁵ In their replying affidavit.

³⁶ In his reply to FRB.

³⁷ At page 21(25).

[94] In their founding papers, the employees said they had “been told” by an unidentified person that the company had only one creditor, SBSA. At that stage, according to the employees, the company owed SBSA only R103 million.³⁸

[95] The employees also said that the company’s debtors totalled R363 million, which can be recovered in full since the debtors are in the coal supply and transport business which “had a downturn between September 2023 and April 2024” but were steadily returning to previous profitable levels. This further contradiction regarding the cause of the company’s collapse has not gone unnoticed.

[96] The employees attached a business rescue practitioner’s report to their application, which report attached a list of creditors. The total creditors, as per the list, amounted to R558 million and included SBSA as well as eight other creditors. SBSA’s debt is recorded as R153 million, and not R103 million as alleged by the employees. The list of creditors materially contradicts, in the same set of papers, the employees’ allegation that SBSA had been the company’s sole creditor. The employees have not explained the discrepancy.

[97] The employees later said³⁹ that the company disputes the creditors’ claims on reasonable grounds. SBSA’s claim is R107 million, not R178 million, and that of Sasol has been reduced by R145 million due to payments by guarantors and insurers. FRB’s claim was overstated. The employees also said⁴⁰ that FRB’s application is driven by self-interest because it is a secured creditor holding cession of the company’s debtor’s book. FRB’s opposition is motivated by the desire to avoid its obligation, as a secured creditor, to account for the recoveries made from the debtor’s book ceded to it. FRB has neither the incentive nor the mandate to maximise recoveries for the general body of creditors. FRB’s failure to provide any accounting of the debts recovered suggests that FRB may have recovered substantial amounts.

³⁸ Paragraph 52 at page 9(10).

³⁹ In their supplementary affidavit.

⁴⁰ In their replying affidavit.

[98] Under the heading "Creditor breakdown,"⁴¹ the employees listed the priority creditors, identified as FRB and SBSA, at R180 million, whilst the supportive creditors, Hollard, Credit Guarantee, Omart, Daimler FS, ICT, Coface and others are at R270 million. According to the employees, the company's total creditors in October 2025 were R550 million.

[99] I have earlier alluded to Merchant West's belated intervention application. Merchant West's counsel informed me that Merchant West's claim was R27 million. In his replying affidavit to FRB's answer, filed in January 2026, Mr Subramoney alleged that the company owed Merchant West R1 million.⁴² If I consider that FRB stated Merchant West's claim as R30 million, then at first glance, it appears that Mr Subramoney has substantially understated Merchant West's claim or, if he is to be believed, that the company had made a substantial payment to Merchant West, in which event Merchant West's claim of R27 million could not be correct.

[100] Mr Subramoney alleged⁴³ that Sasol issued summons against the company for payment of R86 million, only to withdraw the ensuing summary judgment application, thereby acknowledging the merits of the company's defence. He alleged that Sasol's claim has been paid in full.

[101] In its response, Sasol explained that it had not pursued the summary judgment application because at the time it believed that it was precluded from obtaining judgment because of the moratorium on legal proceedings during business rescue proceedings. The summary judgment application was set down for 11 August 2025. On that morning, the company filed an affidavit resisting summary judgment, causing the application for summary judgment to be postponed. The decision to not persist with the summary judgment application, says Sasol, is irrelevant to the merits of its claim against the company.

⁴¹ In their second business rescue plan.

⁴² At page 21(25).

⁴³ In his founding affidavit.

[102] Sasol said it had received payment of R50 million from Hollard, R35 million from Credit Guarantee, and a further R60 million from Mutual Federal. After these payments, the balance due to Sasol is R85 million.

[103] I want to make it clear that I make no finding regarding the company's indebtedness to the liquidation supporters, since that issue is contested and will be dealt with when the liquidation applications are considered.

The company's assets

[104] The employees stated⁴⁴ that the "obstructionist conduct of the banks" was likely to promote "a fire sale of assets in liquidation to the disadvantage of all affected parties". This response suggested that the company had realisable assets. Later, they said⁴⁵ that the company held no assets in its own name. The only substantial asset was the shares it held in its sister company, which had been liquidated. The sister company's liquidation will yield a dividend of less than one cent per Rand. The fire sale of assets the employees predicted in the supplementary affidavit appears to be a non-starter.

[105] Mr Subramoney stated that the company had an active debtor's book of R205 million which had been ceded to FRB and SBSA.⁴⁶ In the same affidavit, he said the debtor's book was R380 million.⁴⁷ Notwithstanding the request, neither FRB nor SBSA had provided him with accounting regarding recoveries of the debtor's books. He complained that the failure to disclose the figures demonstrates "concerning intent and prejudice" to the company's ability to accurately determine its true financial position. He estimated, without substantiating, that approximately R100 million should have been recovered over the last 18 months. He did not explain why he had not contacted the debtors to reconcile the outstanding debtor's book, as a concerned director would have done.

⁴⁴ In their supplementary affidavit.

⁴⁵ In their replying affidavit.

⁴⁶ At page 17(10).

⁴⁷ At pages 17(10) and 17(38).

The company's current income

[106] The employees said⁴⁸ that the management accounts reflect that the company's turnover for the 9 months from October 2025 to June 2026 was R448 million. The net profit, after overheads, for these 9 months was approximately R14 million. The results, the employees submit, "supersede the earlier monthly projections and place the reasonable prospect beyond conjecture".

[107] In most people's books, R14 million is a lot of money, but it requires a closer look. However, according to my calculations, if the net profit is used to repay debt of, for example, R140 million, it would take the company 10 years to repay, and that does not account for interest.

The employees' first business rescue plan

[108] The employees' first business rescue plan emanates from their founding affidavit. The employees stated that there were "reasonable prospects that [SBSA] will be fully paid as the company had been able to secure post-commencement funding of R5 million from an unidentified funder despite the winding-up application".

[109] The employees indicated that they had consulted with a business rescue practitioner who, on the strength of an unexplained preliminary enquiry into the company's affairs, was satisfied that the company can be rescued. Annexure B to the employees' founding papers is the business rescue practitioner's report.

[110] The business rescue practitioner estimated fuel sales of R170 million for the next year and gas sales of R7.9 million for that period. These add up to a rounded-off amount of R180 million. The business rescue practitioner estimates a profit margin of between 7% and 10%. If I apply a liberal profit margin of 10% to the rounded-off R180 million, the estimated profit is R18 million per year.

⁴⁸ In their replying affidavit.

[111] The employees said that a business rescue order would be just and equitable because the (then) current fuel and gas sales would enable the company to return to a favourable financial position “to pay its only creditor, [SBSA].” Liquidation would be of little to no financial benefit as the company’s “value remains in it continuing to trade in fuel and gas.”

[112] The employees’ first business rescue plan cannot be taken seriously because, according to them, the company had only one creditor at the time, SBSA.

The employees’ second business rescue plan

[113] The employees published their second business rescue plan in their supplementary affidavit, at the same time that Mr Subramoney had published his business rescue plan. Therein they said that the company’s rescue will involve four primary phases: salary restructuring, asset rationalisation, market recovery and depot consolidation. These measures have apparently already produced measurable financial improvements. All employees have, since August 2024, voluntarily accepted a reduction in salary. Financial data supports this progress, the employees said. Turnover increased from approximately R6 million in June 2025 to approximately R22 million by August 2025.

[114] The plan also envisages that the company will expand through a franchise model which will by 2028 create 2000 jobs.

[115] Under the heading “Funding requirements (Lean Model)”, the plan explains that the company requires external funding of R50 million to restart and restructure. R25 million is required for working capital, R20 million for retail expansion and R5 million for a contingency buffer.

[116] The employees’ second business rescue plan requires R50 million for it to be successful. This is significantly more than the R5 million it initially thought would suffice.

Mr Subramoney's business rescue plan

[117] Mr Subramoney published his business rescue plan together with his business rescue application. He stated that his intervention was necessary to present a comprehensive business rescue plan in line with the transformative developments, securing R100 million in post-commencement funds and a 10 million litre monthly fuel supply contract.

[118] The purpose of his application was to present to the court a comprehensive body of evidence of "not merely a reasonable prospect of rescue, but a near certainty of successful rehabilitation based on secured funding and contracted revenue that transforms the company's position".

[119] Since the filing of the employees' application, fundamental changes have occurred as the company has secured R100 million in post-commencement funding, which represents one of the largest facilities in the country's business rescue history. The monthly fuel supply contract, which would commence in November 2025, would generate nearly R11 million in gross profit. These developments transform the business rescue from "a hopeful recovery to a funded certainty".

[120] He referred to the company's performance for the June to August 2025 period. According to him, the company's total gross profit during this period was R42 million. The preliminary figures for September 2025, he said, showed a turnover accelerating to R35 million "following the R100 million funding announcement". He predicted that the turnover for March 2026 would be R100 million.⁴⁹

[121] Regarding the R100 million facility, Mr Subramoney said it has been structured to optimise capital deployment with R30 million allocated to working capital, R30 million for retail expansion, R15 million for technology and systems implementation, R10 million for strategic inventory and R5 million as a contingency buffer.

⁴⁹ At page 17(14).

[122] The funds were secured through intensive engagement with (unidentified) sophisticated financial institutions and (unidentified) creditors, who conducted thorough due diligence and who concluded that the company “represents a compelling recovery opportunity”. The R100 million will be leveraged to “achieve rapid market capture rather than gradual recovery”.

[123] He said that in business rescue, FRB and SBSA will receive 120% of their R180 million debt within 18 months, making business rescue a better option than liquidation. If Mr Subramoney is to be believed, he is fighting for a better return for the liquidation supporters, but they seem to be fighting for a smaller return.

[124] The company’s claims against Sasol and SBSA had been thoroughly vetted by (unidentified) legal counsel with “extensive discovery completed”. The probability of recovery from Sasol is 40% and from SBSA 30%. I am no statistician, but if a plaintiff has a 40% or 30% chance of winning a case, the plaintiff’s risk of losing is 60% or 70% respectively.

[125] Mr Subramoney stated that management has made substantial personal sacrifices despite overwhelming challenges and that all management personnel voluntarily accepted a 40% salary reduction. He said he had provided personal suretyships and guarantees totalling millions of Rand. The exceptional growth of the company proved management’s capabilities. In my view, if growth proves capability, then, surely, unpaid debts of millions of Rands prove incapability.

[126] Mr Subramoney said the window of opportunity is clear: the company has R100 million to deploy; its competitors lack working capital; they are retrenching whilst the company is hiring and expanding; competitors are losing market share; and the company has secured a major anchor contract.

[127] Elsewhere in the plan, he said that the “September 2025 preliminary results *following the R100 million funding injection* show turnover of R35 million with margins of 6,50% generating R2,275,000 gross profit”. In the last paragraph of his affidavit, he says that the “funding *is* deployed”. Here the funding has already been

deployed, whilst earlier he alleged that the funding would be deployed (when received).

[128] He also attached the fuel contract and a letter⁵⁰ from 27 Four Capital Partners. In the letter it is stated that the company's previous funding application had not been approved but that the funders now wish to confirm their keen interest in funding the company to a maximum capital amount of R100 million on terms and conditions to be agreed upon and determined in conjunction with the appointed business rescue practitioner and after conclusion of a due diligence on the company's dispute with Sasol and SBSA. The funding was conditional upon the funders being comfortable, in their sole and unfettered discretion, that nothing related to the disputes shall interfere with the funders' rights against the company. The outcome of the funding application is subject to the funders concluding a due diligence on the proposed business rescue plan and the funders' investment committee's approval.

[129] The funders made it clear that their letter was intended for the company, that it shall remain confidential, and that no person other than the company shall be entitled to rely on this letter against the funders. This letter is at best a promise, not under oath, that subject to multiple conditions, an investment committee will consider the request for funding. It is by no means confirmation of approved funding.

[130] In its answer, FRB stated that it had considered the proposed business rescue plan and had concluded that it would vote against it. In *Oakdene*,⁵¹ the court said that:

"If the majority creditors declare that they will oppose any business rescue scheme based on those grounds, I see no reason why that proclaimed opposition should be ignored. Unless, of course, that attitude can be said to be unreasonable or mala fide. By virtue of s 132(2)(c)(i) read with s 152 of the Act, rejection of the proposed rescue plan by the majority of creditors will normally sound the death knell of the proceedings. It is true that such rejection can be revisited by the court in terms of s

⁵⁰ At page 18(43).

⁵¹ *Oakdene*, fn 27 at para 38.

153. But that, of course, will take time and attract further costs. Moreover, the court is unlikely to interfere with the creditors' decision unless their attitude was unreasonable."

[131] Mr Subramoney's business rescue plan is self-destructing. One moment the company is promised R100 million, the next moment the R100 million has already been injected. But if the R100 million has not been paid, what Mr Subramoney effectively asks for is a court-sanctioned loan and a court-sanctioned moratorium on existing creditor claims.

The employees' future

[132] Liquidation would result, the employees said, in significant loss of employment which would impact the employees and their dependants. In their supplementary affidavit, the employees indicated that all employees had, since August 2024, voluntarily accepted a reduction in salary. The employees' loyalty to work without full salary and willingness to endure hardship underscores their confidence that the company can be rescued.

[133] Business rescue would devastate approximately 30 employees and hundreds of indirect workers and dependents, and the socio-economic consequences for the Emalahleni region would be severe. Each employee supports on average six dependents. The type of work employees do is not readily available in the open market.

[134] The employees said⁵² they were ordinary working people, depending entirely on their salaries for their families' livelihoods. The employees fund the litigation by pooling their limited resources whilst experiencing significant financial difficulties due to agreed salary reductions.

[135] At the hearing, I pointed out to the employees' counsel that I found it difficult to understand how a company that generated R14 million net profit in 9 months

⁵² In their replying affidavit.

could still expect its employees to work at reduced salaries. He responded that the employees agreed to return to normal salary once the business has been rescued.

Liquidation versus business rescue

[136] FRB's counsel argued that business rescue proceedings are notorious for the inordinate amount of litigation it generates, resulting in unreasonable delays. Mr Subramoney's counsel argued that, although there are often delays, legislation compels business rescue proceedings to be finalised in about six weeks. In *Oakdene (court a quo)*,⁵³ the court held that business rescue proceedings are "open-ended, and could probably include further applications to court and carry on for a considerable period of time."

[137] I considered the impact of the lapse of time since lodging of the liquidation applications. Could it be argued that the two years that have lapsed suffice as proof that the company can be rescued? I concluded that the answer is no, because during this period, no creditor had been paid. The company was for the past two years basically stuck in neutral space between liquidation and business rescue. The creditors too.

[138] Section 129 affords the company the option to lodge a business rescue application, but before any liquidation proceedings have been initiated. The rationale is obvious: The company's board will always be the first to sense that the company is in financial distress. Section 129 affords the board the opportunity, but at the same time, a built-in warning that the option is not indefinitely open.

[139] Mr Subramoney has not explained why he had not considered business rescue soon after what he terms a catastrophic fuel supply crisis. His application was indeed triggered by the liquidation applications. If he firmly believed that the

⁵³ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others, Farm Bothasfontein (Kyalami) (Pty) Ltd v Kyalami Events and Exhibitions (Pty) Ltd and Others* [2012] ZAGPJHC 12; 2012 (3) SA 273 (GSJ); [2012] 2 All SA 433 (GSJ) at para 49.6.

company could be rescued, surely he would have brought that application before any liquidation application?

The fate of the employees

[140] The fate of the employees is the only fact that supports an order to place the company under business rescue supervision, but on its own, it is unfortunately not enough to sustain that order. The company's employees are directly affected, but one should not forget that the creditors' employees also rely on their companies to collect the debt due to the creditors. The creditors' employees are indirectly affected.

Which application to dismiss?

[141] I will, for the present, given my conclusion, accept that section 131 envisages more than one business rescue application. I will therefore dismiss both applications for the reasons evident from this judgment.

Costs

[142] It is trite that the cost order follows the result. I do not see any reason to deviate from this principle. There are, however, other considerations.

[143] The employees have, on their version, pooled their salaries to come to the assistance of the company of which Mr Subramoney is the sole beneficial owner. It would, in my view, be fair to order that Mr Subramoney pay their costs.

[144] Given Mr Subramoney's delaying strategy, to which I have alluded, a punitive cost order is warranted to show the court's disapproval. For the taxing master's benefit, I confirm that had I not ordered a punitive cost order, I would have ordered costs on high court party and party scale C.

[145] I make no cost order against Merchant West, because of my finding that they served the ultimate interests of Mr Subramoney. If not for that, I would have ordered Merchant West to pay costs on a punitive scale, because its intervention application took up much of the court's time on 21 July 2026 and contributed to the parties only dealing with the business rescue applications and not the liquidation applications.

Conclusion

[146] The business rescue application's eloquence outweighs its substance. To borrow from the title of an opening address given by Professor Mongalo: "To place the company under business rescue would be one step forward but two steps back".⁵⁴

Order

[147] The following order is made:

1 Mr Subramoney is granted leave to intervene in the employees' business rescue application under case number 1476/2024.

2 It is confirmed that the matters were consolidated by order of the Judge President on 13 February 2025, alternatively by Msibi AJ on 7 October 2025.

3 The application by Merchant West to intervene is dismissed.

4 The late filing by the employees of their replying affidavit in their application to place SFT Energy (Pty) Ltd under business rescue supervision is condoned.

5 The application by the employees of SFT Energy (Pty) Ltd to place SFT Energy (Pty) under business rescue supervision is dismissed.

⁵⁴ TH Mongalo, 2014; Two steps forward and one step back is better than one step forward and two steps back: A limited comparative analysis of business rescue in South Africa.

6 The application by Mr Subramoney to place SFT Energy (Pty) Ltd under business rescue supervision is dismissed.

7 Mr Subramoney, in his personal capacity, is ordered to pay the costs of those parties opposing his application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.

8 Mr Subramoney, in his personal capacity, is ordered to pay the costs of those parties opposing the employees' application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.

9 Mr Subramoney, in his personal capacity, is ordered to pay the costs of the employees in their application to place SFT Energy (Pty) Ltd under business rescue supervision, on an attorney and client scale. The costs to include the costs of two counsel, where so employed.

10 The determination of placing SFT Energy (Pty) Ltd in liquidation in terms of section 131(1)(4)(b) of the Companies Act 71 of 2008 is postponed to a date to be determined as set out below.

11 The liquidation applications of First Rand Bank Ltd and Standard Bank of South Africa Ltd, and Sasol Oil (Pty) Ltd (Sasol) are postponed to a date to be determined as set out below.

12 The attorneys of the parties to the consolidated matter are ordered to, amongst themselves and within ten days from this order, complete and file a Form B.

13 The attorneys of First Rand Bank Ltd are ordered to enrol the matter within 15 days of this order.

14 Should any party fail or refuse to co-operate in complying with the orders relating to the determination of the date of hearing or the completion of Form B, any other party may approach the registrar for enrolment of the matter for judicial case management by this court.

15 The date of hearing is to be arranged in conjunction with this court's secretary.

16 The parties are invited to file supplementary heads of argument by no later than 15 September 2026, strictly dealing with (a) whether a liquidation order in terms of section 131(1)(4)(b) of the Companies Act 71 of 2008 may be granted whilst a business rescue application is pending, and (b) whether section 131 envisages more than one business rescue application.

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SCHUTTE AJ

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MIDDELBURG

Appearances

For First Rand Bank	Adv Vorster SC Adv de Oliveira
For SFT Energy	Adv van Rensburg SC Adv Sullivan Adv de Beer
For the employees	Adv Mtsweni
For Mr Subramoney	Adv de Leeuw
For SACWU	Adv Mathupana
For Sasol	Adv Coertzen
For Standard Bank	Adv Coertzen
For Merchant West	Adv Broodryk
Date heard:	21 July 2026
Judgment delivered:	24 August 2026